

ESTTA Tracking number: **ESTTA533385**

Filing date: **04/19/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91206998
Party	Plaintiff Board of Regents, The University of Texas System
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Submission	Motion to Extend
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Signature	/TDS/
Date	04/19/2013
Attachments	Opposer's Motion to Extend.pdf ( 5 pages )(608014 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Board of Regents,  
The University of Texas System,

Opposer,

v.

Kelly Stutes,

Applicant.

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§ Opposition No. 91206998  
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§

**OPPOSER'S MOTION TO EXTEND**

Opposer Board of Regents, The University of Texas System ("Opposer") respectfully requests a sixty (60) day extension of time for all remaining deadlines in this proceeding, including the discovery deadline and the deadline for serving expert disclosures, pursuant to 37 C.F.R. §§ 2.120(a)(2) and 2.121(a), and FED. R. CIV. P. 6(b).

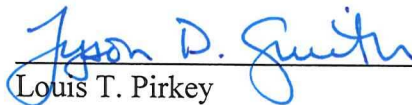
Opposer served written discovery requests, including Requests for Admission, Requests for Production of Documents and Things, and Interrogatories, on Applicant Kelly Stutes ("Applicant") on February 21, 2013. Applicant has not responded to these discovery requests, despite the fact that Applicant's responses were due on March 25, 2012. Opposer's attorneys attempted to contact Applicant's attorney by telephone on April 9, 2013, and then again by email on April 11, 2013, seeking to know what Applicant's intentions are with respect to this proceeding. *See* Ex. A. However, Opposer's counsel has not received any response from Applicant's counsel. Thus, in order to preserve its ability to serve expert disclosures and pursue additional discovery, Opposer seeks this extension of time. Upon granting of this motion, the following time periods shall apply:

Expert Disclosures Due	6/21/2013
Discovery Closes	7/21/2013

Plaintiff's Pretrial Disclosures	9/4/2013
Plaintiff's 30-day Trial Period Ends	10/19/2013
Defendant's Pretrial Disclosures	11/3/2013
Defendant's 30-day Trial Period Ends	12/18/2013
Plaintiff's Rebuttal Disclosures	1/2/2013
Plaintiff's 15-day Rebuttal Period Ends	2/1/2013

Dated: April 19, 2013

Respectfully submitted,



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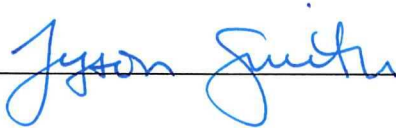
Louis T. Pirkey  
Tyson D. Smith  
PIRKEY BARBER PLLC  
600 Congress Avenue, Suite 2120  
Austin, Texas 78701  
Telephone: 512-322-5200  
Fax: 512-322-5201

ATTORNEYS FOR OPPOSER

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing was served via email, upon agreement of the parties, on April 19, 2013 on Applicant's attorney:

Mark A. Kammer  
Kammer Browning PLLC  
7700 Broadway  
Suite 202  
San Antonio, TX 78209  
makammer@kammerbrowning.com

  
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# EXHIBIT A

## Tyson Smith

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**From:** Louis Pirkey  
**Sent:** Thursday, April 11, 2013 10:21 AM  
**To:** Mark A. Kammer  
**Cc:** Tyson Smith  
**Subject:** UTHSCSA v. Kelly Stutes

Mark,

Tyson and I called you Tuesday and left a message about this case. I assume you are out of town and will return the call in due course, but if so perhaps you could reply by email to let us know your client's intentions.

As you know, we served written discovery (interrogatories, requests for admission, and document requests) on February 21. We have received no response to that discovery. Under the rules, the requests for admission are now admitted, and those admissions would seem to justify entry of summary judgment for UTHSCSA.

We also note that Mr. Stutes has changed the name of his company to Allo-Advancements, Inc.

All of this suggests to us that Mr. Stutes is not going to continue to defend the case, and not going to begin (or continue) use of the ALLOGRAFT RESOURCES mark. If this is true, we can move for summary judgment but that is a lot of unnecessary work. Accordingly, we suggest that Mr. Stutes simply abandon his application and that will put an end to everyone's efforts in the case and not waste any further resources of the TTAB. Under the PTO rules, this abandonment will be without the consent of the opposer so that a final judgment can be entered and put the matter to rest.

We look forward to hearing from you soon, since we have rapidly approaching deadlines--e.g., April 22 for expert disclosures.

Regards,

Lou

Louis T. Pirkey  
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